

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BRIDGEPOINT EDUCATION, INC.,)	Case No. 07cv2222-IEG (BLM)
)	
Plaintiff,)	ORDER GRANTING JOINT MOTION TO
)	RESCHEDULE EARLY NEUTRAL
v.)	EVALUATION CONFERENCE
)	
PROFESSIONAL CAREER DEVELOPMENT)	[Doc. No. 18]
INSTITUTE, LLC, and DOES 1-10,)	
inclusive,)	
)	
Defendants.)	
)	
)	
AND RELATED COUNTERCLAIM.)	
)	

On February 13, 2008, the parties filed a joint motion to reschedule the Early Neutral Evaluation Conference (ENE) in this case due to the unavailability of Plaintiff's CEO on February 20, 2008. Doc. No. 18. The parties requested that the conference be moved to March 10, 2008 - the first date when all counsel and parties will be available. Id.

Good cause appearing, the joint motion is **GRANTED**. The ENE is hereby continued to **March 10, 2008** at **10:00 a.m.** The conference will be held in the chambers of the Honorable Barbara L. Major, United States Magistrate Judge, located at **940 Front Street, Suite 5140, San Diego, California, 92101.**

The following are mandatory guidelines for the parties preparing for the Early Neutral Evaluation Conference.

1 1. **Purpose of Conference:** The purpose of the ENE is to permit
2 an informal discussion between the attorneys, parties, and the
3 settlement judge of every aspect of the lawsuit in an effort to achieve
4 an early resolution of the case. All conference discussions will be
5 informal, off the record, privileged, and confidential. Counsel for any
6 non-English speaking party is responsible for arranging for the
7 appearance of an interpreter at the conference.

8 2. **Personal Appearance of Parties Required:** All parties,
9 adjusters for insured defendants, and other representatives of a party
10 having full and complete authority to enter into a binding settlement,
11 and the principal attorneys responsible for the litigation, must be
12 present **in person** and legally and factually prepared to discuss
13 settlement of the case. Counsel appearing without their clients
14 (whether or not counsel has been given settlement authority) will be
15 cause for immediate imposition of sanctions and may also result in the
16 immediate termination of the conference.

17 Unless there are extraordinary circumstances, persons required to
18 attend the conference pursuant to this Order shall not be excused from
19 personal attendance. **Requests for excuse from attendance for**
20 **extraordinary circumstances shall be made in writing at least three (3)**
21 **court days prior to the conference.** Failure to appear at the ENE
22 conference will be grounds for sanctions.

23 3. **Full Settlement Authority Required:** In addition to counsel
24 who will try the case, a party or party representative with full
25 settlement authority¹ must be present for the conference. In the case
26 _____

27 ¹ "Full settlement authority" means that the individuals at the settlement
28 conference must be authorized to explore settlement options fully and to agree at that

of a corporate entity, an authorized representative of the corporation who is not retained outside counsel must be present and must have discretionary authority to commit the company to pay an amount up to the amount of the Plaintiff's prayer (excluding punitive damages prayers). The purpose of this requirement is to have representatives present who can settle the case during the course of the conference without consulting a superior. Counsel for a government entity may be excused from this requirement so long as the government attorney who attends the ENE conference (1) has primary responsibility for handling the case, and (2) may negotiate settlement offers which the attorney is willing to recommend to the government official having ultimate settlement authority.

4. **Confidential ENE Statements Required:** No later than five (5) court days prior to the ENE, the parties shall submit confidential statements no more than ten (10) pages² in length directly to the chambers of the Honorable Barbara L. Major. **These confidential statements shall not be filed or served on opposing counsel.** Each party's confidential statement must include the following:

a. A brief description of the case, the claims and/or counterclaims asserted, and the applicable defenses or position

_____ time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference contemplates that the person's view of the case may be altered during the face to face conference. Id. at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

² The parties shall not append attachments or exhibits to the ENE statement.

1 regarding the asserted claims;

2 b. A specific and current demand or offer for settlement
3 addressing all relief or remedies sought. If a specific demand or offer
4 for settlement cannot be made at the time the brief is submitted, then
5 the reasons therefore must be stated along with a statement as to when
6 the party will be in a position to state a demand or make an offer; and

7 c. A brief description of any previous settlement
8 negotiations, mediation sessions, or mediation efforts.

9 General statements that a party will "negotiate in good faith" is
10 not a specific demand or offer contemplated by this Order. It is
11 assumed that all parties will negotiate in good faith.

12 **IT IS SO ORDERED.**

13 DATED: February 15, 2008



14
15 BARBARA L. MAJOR
16 United States Magistrate Judge
17
18

19 COPY TO:

20 HONORABLE IRMA E. GONZALEZ
21 U.S. DISTRICT JUDGE

22 ALL COUNSEL
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